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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,198	06/24/2003	P. Michael Collins	MIK/06U	2217
26875	7590	12/14/2005	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			A, PHI DIEU TRAN	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/602,198	COLLINS ET AL.	
	Examiner	Art Unit	
	Phi D. A	3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 18 October 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 5,8,10,11 and 17 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-4,6,7,9,12-16,18 and 25-31 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 9/8/03.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

Election/Restrictions

1. Applicant's election without traverse of figure 6 to claims 1-4, 6-10, 12-18, 25-31 in the reply filed on 10/18/05 is acknowledged.
2. However, upon examination, claims 8, 10-11, 17 are also found not to read on figure 6, but read on non-elected specie of figure 5. The claims are thus withdrawn from considered also as to a non-elected specie.
3. Claims 5, 8, 10-11, 17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected figure 5, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/18/05.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitation "caulk positioned in the first recess" is indefinite as it is confusing the scope of the claim. The "recess" is not claimed subject matter. The relationship between the caulk and the recess thus needs to be stated as subcombination.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 6, 9, 12-15, 18, 25-28, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anastasi (6244001) in view of Northrup Jr. (5473851).

Anastasi (figure 3) shows a cavity wall construction comprising a first wall (72), a second wall (60, 68) generally parallel to and spaced from the first wall, the second wall comprising of masonry units, an opening the first and second walls, the opening including spaced jambs (80) on opposite sides of the opening separated by a header atop the opening, a frame (90) sized and configured to fit within the opening, at least one surround device (16, 85) positioned at the juncture between the frame and one of the jambs and the header of the opening, a first leg (12) of each surround device being juxtaposed to an outer face of the first wall and a second leg (85) of each surround device being juxtaposed to the frame at one of the jambs and the header of the opening to thereby provide a transition from the frame to the second wall, the second leg having a terminal end portion (the end), a frangible connection (the mid section, the claim is not specific as to what structure constitutes frangible) joining the terminal end portion to a remainder of the second leg, a bead (108) of caulk positioned in the recess and sealing the juncture between the frame and the second wall, the first and second legs being generally perpendicular to each other, the opening is one of a window opening and a door opening and the frame is one of a window frame and a door frame, the first and second legs are of dissimilar materials bonded together, the device being L-shaped, the second leg of the device being inserted into the opening.

Anastasi does not show the second wall comprising courses of masonry units held together with mortar.

Northrup Jr. discloses masonry units together with mortar.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Anastasi's structure to show the second wall comprising courses of masonry units held together with mortar because mortar would provide easy and cheap bonding means between adjacent blocks to keep them in place and secured to each other, and having multiple courses of units attached together would enable the blocks to form a wall high up from the ground without resorting to a massive block and thus resulting in cost saving.

3. Claims 7, 16, 29, 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anastasi (6244001) in view of Northrup Jr. (5473851) as applied to claims 13 or 26 respectively and further in view of Boschetti (CH657662).

Anastasi as modified shows all the claimed limitations except for the frangible connection comprising perforations in the closed cell foam material, the frangible connection spaced from one another.

Boschetti shows a frangible connection (7) comprising perforation (the indented holes, not through hole) in a foam material, the frangible connection spaced from one another.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Anastasi's structure to show the frangible connection comprising perforations in the closed cell foam material, the frangible connection spaced from one another as taught by Boschetti because it would allow for the easy control length application of the sealant member in the opening.

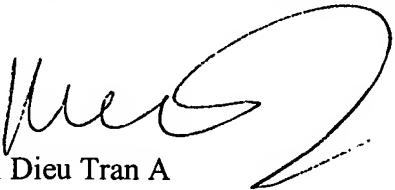
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different sealing device for windows and doors wall frame.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Phi Dieu Tran A

12/8/05